

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DAN BOWMAKER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 247,119
<b>BRADTECH TRAILERS</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated September 2, 1999. In the Order, the Administrative Law Judge denied claimant benefits for an injury to his left foot allegedly occurring on December 27, 1998, but granted medical treatment for claimant's injury to his right hand on January 30, 1999.

**ISSUES**

Did claimant suffer accidental injury arising out of and in the course of his employment to his left foot on December 27, 1998?

In addition, respondent raised the following issues in its brief to the Board:

- (1) Did claimant provide timely notice of injury to his left foot for the injury on December 27, 1998?
- (2) Did claimant suffer accidental injury arising out of and in the course of his employment to his right hand or arm on January 30, 1999?
- (3) Did claimant provide timely notice of injury to his right hand for the injury suffered on January 30, 1999?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

**FINDINGS OF FACT**

Claimant alleges two accidental injuries while employed with respondent. The first allegedly occurred on December 27, 1998, when claimant was pushing a large stack of trays weighing between 1,000 and 3,000 pounds. The trays were stacked on a cart with wheels. Claimant alleged he developed a pain in his foot and soon, because of the pain, he could not stand on his foot. Claimant said he spoke to Brian Bradley, the owner of the company, about the foot injury and was told, if his foot hurt, he should stand on the other one. Mr. Bradley did not testify in this matter but his written statement, admitted into evidence, makes no mention of the claimant's alleged foot problem.

Claimant first sought medical treatment for this foot on March 13, 1999, with Dr. Frank Galbraith, a podiatrist. Dr. Galbraith diagnosed plantar fasciitis and provided an injection into claimant's foot. Claimant was next seen on March 26, 1999, at which time Dr. Galbraith found claimant to be much improved and dismissed him from treatment. Dr. Galbraith's medical history indicates that claimant had been having trouble with his left heel for approximately seven months with no history of trauma. It does note that claimant stands at work as a painter. The medical information also indicates that claimant's heel pain increased early in the morning when he first got up and also after sitting or standing a while. Dr. Galbraith gave no opinion regarding the cause of claimant's foot problems.

Claimant alleges that he told Joanne Shoaf, the respondent's office manager, of the foot problems. Ms. Shoaf denies being advised by claimant that he suffered injury to his foot. Claimant alleged he asked Ms. Shoaf if she knew of a good foot doctor. Ms. Shoaf also denies this conversation ever occurred. Ms. Shoaf was the person to whom claimant would report injuries.

Claimant next alleges injury on January 30, 1999, when he was in an altercation with respondent's owner, Mr. Bradley. Claimant stated on that date Mr. Bradley approached him, angry about claimant's job performance, grabbed him by the arm, jerking his arm around and striking him in the back. Claimant alleges, as a result of that altercation, he suffered injury to his right hand which he said was in a pocket on a trailer guard and was in some way injured.

Ms. Shoaf, when asked about the hand incident, acknowledged claimant told her that Mr. Bradley had hit him but made no mention of his hand hurting. He only mentioned

a problem with his shoulder which is not part of this claim. He also failed to request any type of medical treatment for either the hand or the foot.

Another witness by the name of Bill Brody, claimant's coworker, did testify but failed to mention claimant's alleged foot injury. Mr. Brody however was a witness to the argument between claimant and Mr. Bradley, and testified that Mr. Bradley jerked claimant around and hit him in the back. Claimant did mention his hand was hurting but that comment did not occur on the date of accident. Mr. Brody also did not hear claimant discuss the hand with Mr. Bradley on the date of the argument. Claimant later told Mr. Brody that he was having difficulty holding a spray gun because of the problems with his hand.

Claimant sought medical treatment for the foot as above indicated, but when being treated by Dr. Galbraith failed to mention the hand. Claimant alleges he told the nurse of the hand incident but there are no medical notes in the record to reflect this conversation occurred. Claimant further alleges that the nurse told him that she does not do hands, and therefore no treatment was provided.

Ms. Shoaf also testified about claimant's work history with respondent. The employment records in her possession indicated that on the date of the alleged foot injury, December 27, 1998, claimant did not work. He was, however, working on January 30, 1999, the date of the alleged injury to his hand.

#### CONCLUSIONS OF LAW

In proceedings under the Workers Compensation Act, it is the claimant's burden to prove his entitlement to the benefits requested by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

The testimony of Ms. Shoaf indicates claimant was not working on the alleged date of the foot injury. The Board also notes that the only notice testified to by claimant supposedly occurred on the date of accident, a day when claimant was not working for respondent. It is also suspect that claimant would delay treatment for this foot injury until March 13, 1999, and then fail to advise the doctor at that time of any traumatic injury suffered at work. Claimant described the injury as being so severe that he could not continue standing on his feet and yet went two and a half months without seeking medical treatment. The Administrative Law Judge found claimant failed to prove that his foot condition arose out of and in the course of his employment. The Appeals Board agrees and finds that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment on the date alleged, and further that he failed to prove timely notice under K.S.A. 44-520.

With regard to the injury to claimant's hand, the Appeals Board finds that claimant did suffer accidental injury on the date alleged. Claimant's coworker, Mr. Brody, testified to seeing the incident between claimant and Mr. Bradley, the company owner. The description of the incident by Mr. Brody is very similar to that provided by claimant in that he saw Mr. Bradley yank claimant and strike him in the back. Claimant later voiced difficulty operating the paint gun because of the injury to his hand. The Appeals Board finds claimant's version of the incident to be more credible, and further finds that claimant's allegation that he notified respondent on the date of accident of the hand injury is also the more credible testimony at this time. Therefore, the Administrative Law Judge's award of medical treatment to the claimant for the right hand is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated September 2, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1999.

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
William L. Townsley, III, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director